year circulating commemorative coin program to commemorate each of the 50 States, and for other purposes.

S. 1251

At the request of Mr. D'AMATO, the names of the Senator from Idaho [Mr. CRAIG] and the Senator from Massachusetts [Mr. KERRY] were added as cosponsors of S. 1251, a bill to amend the Internal Revenue Code of 1986 to increase the amount of private activity bonds which may be issued in each State, and to index such amount for inflation.

S. 1252

At the request of Mr. D'AMATO, the names of the Senator from Idaho [Mr. CRAIG] the Senator from Massachusetts [Mr. KERRY] and the Senator from Illinois [Ms. MOSELEY-BRAUN] were added as cosponsors of S. 1252, a bill to amend the Internal Revenue Code of 1986 to increase the amount of low-income housing credits which may be allocated in each State, and to index such amount for inflation.

S. 1256

At the request of Mr. HATCH, the name of the Senator from Nebraska [Mr. HAGEL] was added as a cosponsor of S. 1256, a bill to simplify and expedite access to the Federal courts for injured parties whose rights and privileges, secured by the United States Constitution, have been deprived by final actions of Federal agencies, or other government officials, or entities acting under color of State law; to prevent Federal courts from abstaining from exercising Federal jurisdiction in actions in which no State law claim is alleged; to permit certification of unsettled State law questions that are essential to Federal claims arising under the Constitution; to allow for efficient adjudication of constitutional claims brought by injured parties in the United States district courts and the Court of Federal Claims; to clarify when government action is sufficiently final to ripen certain Federal claims arising under the Constitution; and for other purposes.

S. 1264

At the request of Mr. HARKIN, the name of the Senator from California [Mrs. BOXER] was added as a cosponsor of S. 1264, a bill to amend the Federal Meat Inspection Act and the Poultry Products Inspection Act to provide for improved public health and food safety through enhanced enforcement.

S. 1287

At the request of Mr. JEFFORDS, the name of the Senator from New Jersey [Mr. TORRICELLI] was added as a cosponsor of S. 1287, a bill to assist in the conservation of Asian elephants by supporting and providing financial resources for the conservation programs of nationss within the range of Asian elephants and projects of persons with demonstrated expertise in the conservation of Asian elephants.

S. 1297

At the request of Mr. COVERDELL, the name of the Senator from Alabama [Mr. SESSIONS] was added as a cosponsor of S. 1297, a bill to redesignate Washington National Airport as ''Ronald Reagan Washington National Airport''.

S. 1311

At the request of Mr. LOTT, the name of the Senator from Massachusetts [Mr. KERRY] was added as a cosponsor of S. 1311, a bill to impose certain sanctions on foreign persons who transfer items contributing to Iran's efforts to acquire, develop, or produce ballistic missiles.

S. 1320

At the request of Mr. ROCKEFELLER, the names of the Senator from Massachusetts [Mr. KERRY] and the Senator from Nevada [Mr. BRYAN] were added as cosponsors of S. 1320, a bill to provide a scientific basis for the Secretary of Veterans Affairs to assess the nature of the association between illnesses and exposure to toxic agents and environmental or other wartime hazards as a result of service in the Persian Gulf during the Persian Gulf War for purposes of determining a service connection relating to such illnesses, and for other purposes.

S. 1321

At the request of Mr. TORRICELLI, the names of the Senator from Rhode Island [Mr. CHAFEE] and the Senator from Rhode Island [Mr. REED] were added as cosponsors of S. 1321, a bill to amend the Federal Water Pollution Control Act to permit grants for the national estuary program to be used for the development and implementation of a comprehensive conservation and management plan, to reauthorize appropriations to carry out the program, and for other purposes.

S. 1334

At the request of Mr. BOND, the name of the Senator from Washington [Mr. GORTON] was added as a cosponsor of S. 1334, a bill to amend title 10, United States Code, to establish a demonstration project to evaluate the feasibility of using the Federal Employees Health Benefits program to ensure the availablity of adequate health care for Medicare-eligible beneficiaries under the military health care system.

S. 1335

At the request of Ms. SNOWE, the name of the Senator from Maryland [Ms. MIKULSKI] was added as a cosponsor of S. 1335, a bill to amend title 5, United States Code, to ensure that coverage of bone mass measurements is provided under the health benefits program for Federal employees.

S. 1343

At the request of Mr. LAUTENBERG, the names of the Senator from Massachusetts [Mr. KENNEDY] and the Senator from Illinois [Mr. DURBIN] were added as cosponsors of S. 1343, a bill to amend the Internal Revenue Code of 1986 to increase the excise tax rate on tobacco products and deposit the resulting revenues into a Public Health and Education Resource Trust Fund, and for other purposes.

S. 1351

At the request of Mr. BURNS, the name of the Senator from Missouri [Mr. BOND] was added as a cosponsor of S. 1351, a bill to amend the Sikes Act to establish a mechanism by which outdoor recreation programs on military installations will be accessible to disabled veterans, military dependents with disabilities, and other persons with disabilities.

S. 1371

At the request of Mr. KOHL, the name of the Senator from Montana [Mr. BURNS] was added as a cosponsor of S. 1371, a bill to establish felony violations for the failure to pay legal child support obligations, and for other purposes.

SENATE CONCURRENT RESOLUTION 59

At the request of Mr. D'AMATO, the names of the Senator from Maine [Ms. SNOWE] and the Senator from Illinois [Mr. DURBIN] were added as cosponsors of Senate Concurrent Resolution 59, a concurrent resolution expressing the sense of Congress with respect to the human rights situation in the Republic of Turkey in light of that country's desire to host the next summit meeting of the heads of state or government of the Organization for Security and Cooperation in Europe (OSCE).

SENATE RESOLUTION 116

At the request of Mr. JEFFORDS, the name of the Senator from Idaho [Mr. CRAIG] was added as a cosponsor of Senate Resolution 116, a resolution designating November 15, 1997, and November 15, 1998, as ''America Recycles Day''.

SENATE RESOLUTION 145

At the request of Mr. CAMPBELL, the names of the Senator from Alaska [Mr. MURKOWSKI] and the Senator from Alaska [Mr. STEVENS] were added as cosponsors of Senate Resolution 145, A resolution designating the month of November 1997 as ''National American Indian Heritage Month''.

SENATE RESOLUTION 146—ESTABLISHING AN ADVISORY ROLE FOR THE SENATE IN THE SELECTION OF SUPREME COURT JUSTICES

Mr. SPECTER (for himself and Mr. BYRD) submitted the following resolution; which as referred to the Committee on the Judiciary:

S. RES. 146

Whereas, Article II, Section 2 of the United States Constitution authorizes the President to appoint Judges of the Supreme Court ''by and with the Advice and Consent of the Senate'';

Whereas, the Senate has exercised its ''Consent'' function with due diligence through extensive hearings and deliberation prior to voting on nominees to the Court;

Whereas, the Senate has not historically exercised its ''Advice'' function with the exception of a limited consultation with the President on the selection of a nominee in advance of the President making such a nomination;

Whereas, there is no systematic method for selecting Supreme Court nominees, with the

President having historically proceeded on an *ad hoc* basis to consider a limited number of individuals before making his nomination;

Whereas, there is an enormous pool of legal talent who could become Supreme Court nominees;

Whereas, in one case where the Senate exercised influence on the selection of a nominee, it was to replace Justice Oliver Wendell Holmes with Justice Benjamin Cardozo;

Whereas, the importance of having the best and brightest judges is reflected in the fact that the Supreme Court has decided numerous significant cases by a one-vote margin; and

Whereas, it would be useful to create a pool of recognized candidates of superior quality for consideration by the President; Now, therefore, be it

Resolved, That the Senate should better fulfill its ''Advice'' function under Article II, Section 2 by having the Senate Committee on the Judiciary establish a pool of possible Supreme Court nominees for the President to consider, based on suggestions from Federal and State judges, distinguished lawyers and law professors, and others with a similar level of insight into the suitability of individuals considered for appointment to the Supreme Court.

Mr. SPECTER. Mr. President, I have sought recognition today to discuss an idea which has the potential to have a major impact on the rule of law in the United States by having the U.S. Senate exercise its advise function under the advise and consent clause of the Constitution to advise Presidents on who the nominee should be for the Supreme Court of the United States.

The Supreme Court of the United States, as we all know, is the ultimate arbiter of determining what the law will be. In the session which ended last June, the Supreme Court of the United States handed down historic, really monumental decisions on dying, religion, speech, due process, States rights, congressional power, among many other decisions.

The Constitution of the United States established the Congress, in article I, the President in article II, the Court in article III, with an implicit suggestion that the legislative body was preeminent, the executive second, and the judiciary third.

But we know since the decision of the Supreme Court of the United States in Marbury versus Madison, the Supreme Court of the United States has been the preeminent institution, because the Supreme Court of the United States has the last word.

The Supreme Court Justice, the late Chief Justice Charles Evans Hughes, said that the Constitution is what the Supreme Court says it is.

We talk a great deal about the legislature having the power to make the laws and the courts having the limited power to interpret the laws, but the reality is, the brutal fact of life is that the Supreme Court of the United States makes the avant-garde decisions on the periphery and on the horizons of the law.

We can do better, I submit, in the deliberations, the decisions of the Supreme Court of the United States by a closer focus on the quality of those men and women who go to the Supreme Court.

I expect our distinguished colleague, Senator BYRD, to join us on the floor in a few minutes to make a few comments about this idea, as the permanent resident scholar of the Senate and a great authority on constitutional law and a recent losing litigant in the decision of the Supreme Court of the United States in the line-item veto case, where Senator BYRD, along with Senator MOYNIHAN, Senator HATFIELD, and Senator LEVIN challenged the line-item veto in the case of Raines versus Byrd.

The Supreme Court of the United States, in that decision, ruled that Senator BYRD and the other Senators did not have standing to challenge the constitutionality of line-item veto—a curious decision. In my opinion, who would have greater status to challenge the constitutionality of line-item veto than sitting Senators, especially the existing chairman of Appropriations, Senator HATFIELD, and the former chairman of Appropriations, Senator BYRD? But that was the ruling of the Supreme Court.

When we take a look historically, Mr. President, at what the Supreme Court has decided, and in many, many cases by 5 to 4 decisions, it is really astonishing the authority and the power wielded by the Supreme Court of the United States on the lives of every man, woman and child in this country, in a fundamental sense, more so than what the Congress does, and in an equally fundamental sense, more so than what the President does and the bureaucracy of the United States.

In the famous Lochner versus New York case in 1905, the Supreme Court struck down an early attempt at labor regulation by holding that a law limiting bakers to a 60-hour workweek violated the liberty of contracts secured by the due process clause of the 14th amendment. It was a 5-4 decision holding up the efforts of the legislative branch to limit the workweek to 60 hours in the interests of public welfare.

In Hammer versus Dagenhart in 1918, the Supreme Court, again by a 5-4 decision, struck down a labor law. This time the Keating-Owen Federal Child Labor Act, on the grounds that the commerce clause did not give Congress the power to completely forbid certain categories of commerce.

In a celebrated decision, Furman versus Georgia in 1972, the Supreme Court of the United States, again by a 5-4 decision, struck down the death penalty provision under the cruel and unusual punishment clause of the eighth amendment.

We have had a series of very controversial decisions where the Court has imposed seriatim limitations on what States may do by way of imposing the death penalty.

In 1982, in Plyler versus Doe, the Supreme Court, again by a 5-4 decision, invoked the equal protection clause of the 14th amendment to strike down a Texas statute which denied State funding for the education of illegal immigrant children and authorized local school boards to deny enrollment to such children.

Again in a 5-4 decision in Webster versus Reproductive Health Services in 1989, the Supreme Court, in a case widely viewed as a retreat from Roe versus Wade, upheld various restrictions on the availability of abortion, including a ban on the use of public funds and facilities for abortions, and required viability testing after 20 weeks. Again, on a 5–4 decision in 1990 in United States v. Eichman, the Court invalidated State and Federal laws prohibiting flag desecration on the grounds that they violated the first amendment.

In Adarand versus Pena, 1995, the Court held that Federal racial classifications like those of a State must be viewed under strict scrutiny standards.

In the course of the past 5 years, on decisions from 1993–1997, there have been 74 decisions of the Supreme Court of the United States by a 5–4 decision.

Mr. President, when there is a vacancy in the Supreme Court of the United States, there is no existing systematic way for the selection process to occur with respect to the Senate involvement under the advice section of the Advice and Consent Clause. We do know historically that when Justice Oliver Wendell Holmes retired in 1931, there was unique concern about who his replacement should be and that was because of the unique status which Justice Holmes had on the life of the law; the author of ''Common Law'' in 1881, member of the Supreme Judicial Court of Massachusetts for 20 years from 1891 to 1901, and a member of the Supreme Court of the United States for 30 years, until 1931, the author of perhaps the most brilliant decisions on clear and present danger, a Justice extraordinarily gifted.

When he was set to retire, there was unusual public concern about who his replacement would be. President Hoover was reluctant to appoint a New Yorker when many people suggested Benjamin Cardozo, a very distinguished judge on the court of appeals in the State of New York. The chairman of the Judiciary Committee, George W. Norris, made an effort to persuade the President that Benjamin Cardozo ought to be the replacement for Oliver Wendell Holmes, but it was the chairman of the Foreign Relations Committee, William E. Borah, who is historically credited with making the critical suggestion when President Hoover handed Senator Borah a list on which he had ranked individuals whom he was considering for nomination in descending order of preference. The list contained 10 names, and the name on the bottom of the list was Benjamin Cardozo. The Senator looked at the list and replied, ''Your list was all right, but you handed it to me upside down.'' And President Hoover finally conceded, even though reluctant to appoint a Democrat and even though reluctant to

appoint another nominee from the State of New York. Benjamin Cardozo was appointed on February 15, 1932, and the nomination won instant and unanimous approval by the U.S. Senate.

In modern times, we have been very diligent in the exercise of our consent function. The hearings in the Judiciary Committee have focused enormous public attention when the nominees come forward because at that point in time there is an awareness of the importance of the Supreme Court. The decisions which come down, and the 74 decisions which have come down in the last 5 years 5–4, really do not create much of a public ripple, do not attract very much public attention, even though these decisions are of enormous, enormous importance.

Because of this background, Mr. President, it is my thinking that the Senate ought to give consideration to establishing a panel of prospective Supreme Court nominees for submission to the President under our advice function, under the Advice and Consent Clause. Obviously, it is a matter that the President can take or leave, but at least we ought to make that pool available.

I advance this in the closing days of the first session of the 105th Congress so that our colleagues can think about it over the intervening several months, and I will seek cosponsors, seek advice from my colleagues. I have talked it over with a number of the Members of the Senate, including members of the Judiciary Committee and the leadership. There has been a very responsive note about it. I have talked to some on the Supreme Court of the United States. The effort would be to try to diversify the background. Few would know, and many would be surprised to learn, that of the nine Justices on the Supreme Court of the United States, eight of them came from prior judicial appointments.

From time to time when there is a suggestion that somebody be nominated who has a broader background—perhaps as a former Governor, perhaps as a former Cabinet officer, with more background—there is some reluctance. It is safer to appoint someone who has been on a court. It may well be, I think it is true, that the country would be better served by having a Supreme Court which had a more diverse background. One thought would be to ask for suggestions from, say, the chief judges of the Federal circuit courts of appeals to suggest individuals whom they know in their circuit—distinguished lawyers, distinguished professors, people from all walks of life; or to ask the chief judges of the U.S. district courts; or the chief justices of the supreme courts of the various States; or a cross-sampling of judges; or the bar associations of the States; or the American Bar Association; or from the public at large.

Then the Judiciary Committee might well establish a practice—and this is a matter of flexibility—where we would inquire into the backgrounds of the individuals and compile a pool of prospective Supreme Court nominees. There are thousands of lawyers at this moment in America who would love to be judges, and all of them would love to be Justices of the Supreme Court of the United States as a very high honor and an opportunity to serve in a very, very important position. There is enormous legal talent in America, and very little of it, necessarily so, is called to the attention of the President of the United States when a vacancy occurs. From time to time you hear about a nomination and somebody was considered, and the next time a vacancy occurs that person is pretty much automatically put into the spot.

I think it is not betraying the confidence to retell a story about Senator Howard Baker, our distinguished majority leader who later became chief of staff to President Reagan. When Justice Potter Stewart left the bench in 1987, Senator Baker said to President Reagan, ''I'll prepare a list of possible replacements for the Supreme Court of the United States.'' According to Senator Baker, President Reagan responded, ''Do you think you could put Judge Bork on the list?'' rather an interesting comment, perhaps even a curious comment, coming from the President of the United States. Of course he had the power to make the determination, certainly more than the power to decide who would be on the list among those who would be considered.

So I advance this idea, Mr. President, as I say, in the closing days of this session, with my stated intention to discuss the matter further with my colleagues in an effort to develop more ideas as to how we might function and how we might activate and motivate the advice function of the Advice and Consent Clause.

I ask unanimous consent that a very brief summary statement of the kernel of this idea be printed; a form of the resolution be printed with the caveat that it is not intended to be final but a suggested form; and that a listing of the Supreme Court decisions decided by 5–4 from 1994, 1995 and 1996—since I do not want to take the time to put them in the RECORD at this time—be printed, showing the tremendously important matters which are decided by a single Justice having such a profound impact on the law in the United States.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SUMMARY STATEMENT

I suggest to my Senate colleagues that we consider exercising our constitutional ''advice'' function under the ''advice and consent'' clause by establishing a panel of possible Supreme Court nominees for consideration by the President when a vacancy occurs.

There is no doubt about the great power exercised by the Supreme Court since the Court itself decided in *Marbury* v. *Madison* that it had the last word on interpretation of the relative powers of the Congress, the Executive Branch, the states and disputes between any parties who sought a constitutional adjudication.

The Supreme Court has the final say on what happens from conception to death.

In the last week of this June, the Court handed down historic/monumental decisions on dying, religion, speech, due process, states rights and congressional power. Several of the cases were decided by a single justice on a 5 to 4 vote. One case, following two other decisions in the past 2 years, reversed six decades of firmly established constitutional authority on the supremacy of federal laws over states rights under the commerce clause.

Without disparaging the Court's current personnel, it is worth noting that seldom are the justices compared to Oliver Wendell Holmes, Louis Dembitz Brandeis or Benjamin Cardozo.

Wile some nominees get strict scrutiny during the confirmation process, the Senate has traditionally been AWOL on its constitutional responsibility for ''advice.''

For the Supreme Court especially, we should seek the best and brightest.

To create a panel of the best and brightest, I suggest we call on State Supreme Court Chief Justices, Chief Judges from the 13 Federal Courts of Appeals, Chief Judges from the 94 Federal District Court panels, academic and lawyers' associations and others to make suggestions. The Judiciary Committee could then review and evaluate those suggested for submission of a panel to the President.

Frequent complaints are heard about nominations to satisfy a specific constituency. With sufficient early outreach, we can get diversity in the best and the brightest without accepting lesser qualifications.

SUPREME COURT DECISIONS
OCTOBER 1996 TERM

Abrams v. Johnson 66 USLW 4478 (1997).

Opinion: Kennedy, Rehnquist, O'Connor, Scalia, Thomas.

Dissent: Breyer, Stevens, Souter, Ginsburg.

Holding: Georgia's congressional districting plan, imposed by a federal district court after the legislature deadlocked and was unable to adopt a new districting law in conformity with the Supreme Court's ruling in *Miller v. Johnson* (1995), is valid.

Agostini v. Felton 65 USLW 4524 (1997).

Opinion: O'Connor, Rehnquist, Scalia, Kennedy, Thomas.

Dissent: Souter, Stevens, Ginsburg, Breyer.

Holding: The First Amendment's Establishment Clause does not bar use of public school teachers in parochial schools to provide remedial education to disadvantaged children pursuant to Title I of the Elementary and Secondary Education Act of 1965.

Camps Newfound/Owatonna v. Town of Harrison 117 S.Ct. 1590 (1997).

Opinion: Stevens, O'Connor, Kennedy, Souter, Bryer.

Dissent: Scalia, Rehnquist, Thomas, Ginsburg.

Holding: Maine's property tax law, which contains an exemption for charitable institutions but limits that exception to institutions serving principally Maine residents, violates the ''dormant'' Commerce Clause as applied to deny exemption status to a nonprofit corporation that operates a summer camp for children, most of whom are not Maine residents.

Commissioners of Bryan County v. Brown 117 S.Ct. 1382 (1997).

Opinion: O'Connor, Rehnquist, Scalia, Kennedy, Thomas.

Dissent: Souter, Stevens, Breyer, Ginsburg.

Holding: The county is not liable under 42 U.S.C. §1983 for personal injury resulting from the use of excessive force by a police officer who had been hired in spite of an arrest record for various misdemeanors that included assault and battery, resisting arrest, and public drunkenness.

Glickman v. Wileman Bros. & Elliott, Inc. 65 USLW 4597 (1997).

Opinion: Stevens, O'Connor, Kennedy, Ginsburg, Breyer.

Dissent: Souter, Rehnquist, Scalia, Thomas.

Holding: A requirement imposed by marketing orders promulgated under authority of the Agricultural Marketing Agreement Act of 1937 that California fruit growers finance generic advertising does not offend the First Amendment.

Idaho v. Coeur d'Alene Tribe 65 USLW 4540 (1997).

Opinion: Kennedy, Rehnquist, O'Connor, Scalia, Thomas.

Dissent: Souter, Stevens, Ginsburg, Breyer.

Holding: The Tribe's action against the State for a declaratory judgment and an injunction establishing the Tribe's ownership an control of the submerged lands and bed of Lake Coeur d'Alene is barred by the Eleventh Amendment.

Kansas v. Hendricks 65 USLW 4564 (1997)

Opinion: Thomas, Rehnquist, O'Connor, Scalia, Kennedy.

Dissent: Breyer, Stevens, Souter, Ginsburg.

Holding: Kansas's Sexually Violent Predator Act, which provides for civil commitment of persons who have been convicted or charged with a sexually violent offense, an who, due to a ''mental abnormality'' or ''personality disorder'' are likely to engage in ''predatory acts of sexual violence,'' does not offend the substantive requirements of the Due Process Clause.

Lambrix v. Singletary 117 S.Ct. 1517 (1997).

Opinion: Scalia, Rehnquist, Kennedy, Souter, Thomas.

Dissent: Stevens, Ginsburg, Breyer, O'Connor.

Holding: A state prisoner whose conviction became final before the Court's decision in *Espinosa v. Florida* (1992) is foreclosed from relying on that decision in a federal habeas corpus proceeding because Espinosa announced a ''new rule'' within the meaning of *Teague v. Lane* (1989).

Lawyer v. Department of Justice 65 USLW 4629 (1997).

Opinion: Souter, Rehnquist, Stevens, Ginsburg, Breyer.

Dissent: Scalia, O'Connor, Kennedy, Thomas.

Holding: A federal district court did not err in approving a settlement agreement imposing new districts for election of members of the Florida Senate and House without first holding unconstitutional the existing plan.

Lindh v. Murphy 65 USLW 4557 (1997).

Opinion: Souter, Stevens, O'Connor, Ginsburg, Breyer.

Dissent: Rehnquist, Scalia, Kennedy, Thomas.

Holding: Amendments made by the Antiterrorism and Effective Death Penalty Act to the general habeas corpus provisions of chapter 153 of Title 28 do not apply to cases that were pending on the date of enactment.

McMillan v. Monroe County 117 S.Ct. 1734 (1997).

Opinion: Rehnquist, O'Connor, Scalia, Kennedy, Thomas.

Dissent: Ginsburg, Stevens, Souter, Breyer.

Holding: Sheriffs in Alabama, when exercising policy making authority in a law enforcement capacity, represent the State and not the county.

O'Dell v. Netherland 65 USLW 4506 (1997).

Opinion: Thomas, Rehnquist, O'Connor, Scalia, Kennedy.

Dissent: Stevens, Souter, Ginsburg, Breyer.

Holding: The rule set forth in *Simmons v. South Carolina* (1994)—that a capital defendant must be permitted to inform his sentencing jury that he is ineligible for parole if the prosecution argues that the defendant should receive the death penalty rather than life imprisonment because of his alleged future dangerousness to society—was a ''new rule'' that cannot be used to disturb a death sentence that had become final before *Simmons* was decided.

Old Chief v. United States 117 S. Ct. 644 (1997).

Opinion: Souter, Stevens, Kennedy, Ginsburg, Breyer.

Dissent: O'Connor, Rehnquist, Scalia, Thomas.

Holding: The district court abused its discretion under Rule 403, Federal Rules of Evidence, in ruling that the United States Attorney, in a prosecution for possession of a firearm by someone with a prior felony conviction, need not agree to the defendant's stipulation that he had a prior felony conviction.

Printz. v. United States 65 USLW 4731 (1997).

Opinion: Scalia, Rehnquist, O'Connor, Kennedy, Thomas.

Dissent: Souter, Ginsburg, Breyer, Stevens.

Holding: Interim provisions of the Brady Handgun Violence Prevention Act that require state and local law enforcement officers to conduct background checks on prospective handgun purchasers and to perform certain related tasks are unconstitutional.

Richardson v. McKnight 65 USLW 4579 (1997).

Opinion: Breyer, Stevens, O'Connor, Souter, Ginsburg.

Dissent: Scalia, Rehnquist, Kennedy, Thomas.

Holding: Employees of private prison management companies are not entitled to the qualified immunity that is extended to publicly employed state prison guards in suits brought under 42 U.S.C. §1983.

Turner Broadcasting System v. FCC 117 S. Ct. 1174 (1997).

Opinion: Kennedy, Rehnquist, Stevens, Souter.

Dissent: O'Connor, Scalia, Thomas Ginsburg.

Holding: Sections 4 and 5 of the Cable Television Consumer Protection and Competition Act of 1992, which require cable systems to carry local broadcast television stations, are consistent with the First Amendment.

OCTOBER 1995 TERM

Bennis v. Michigan 116 S. Ct. 994 (1996).

Opinion: Rehnquist, O'Connor, Scalia, Thomas, Ginsburg.

Dissent: Stevens, Souter, Breyer, Kennedy.

Holding: A Michigan court's order of forfeiture of an automobile, jointly owned by a husband and wife, conforms to due process requirement's even with no offset for the wife's half interest in the car.

BMW of North America v. Gore 116 S. Ct. 1589 (1996)

Opinion: Stevens, O'Connor, Kennedy, Souter, Breyer.

Dissent: Scalia, Thomas, Ginsburg, Rehnquist.

Holding: Award of $2 million in punitive damages of $4,000 was so ''grossly excessive'' that it violated the Due Process Clause of the Fourteenth Amendment.

Bush v. Vera 116 S. Ct. 1941 (1996)

Opinion: O'Connor, Rehnquist, Kennedy, Thomas, Scalia.

Dissent: Stevens, Ginsburg, Breyer, Souter.

Holding: Three congressional districts created by Texas law constitute racial gerrymanders that are unconstitutional under the Equal Protection Clause.

Gasperini v. Center for Humanities, Inc. 116 S. Ct. 2211 (1977)

Opinion: Ginsburg, O'Connor, Kennedy, Souter, Breyer.

Dissent: Stevens, Scalia, Rehnquist, Thomas.

Holding: A New York law authorizing appellate courts to review the size of civil jury verdicts and to order new trials when the jury's verdict ''deviates materially from what would be reasonable compensation'' can be given effect by federal district courts reviewing jury awards in cases based on diversity of citizenship without violating the Seventh Amendment.

Gray v. Netherland 116 S. Ct. 2074 (1996)

Opinion: Rehnquist, O'Connor, Scalia, Kennedy, Thomas.

Dissent: Stevens, Ginsburg, Souter, Breyer.

Holding: A habeas corpus petitioner's claim that he was denied due process of law because he was not given adequate notice of some of the evidence that the state would use against him in the penalty phase of his trial would, if sustained, necessitate creation of a ''new rule,'' and therefore does not provide a basis upon which he may receive federal habeas relief.

Holly Farms Corp. v. NLRB 116 S. Ct. 1396 (1996)

Opinion: Ginsburg, Stevens, Kennedy, Souter, Breyer.

Dissent: O'Connor, Rehnquist, Scalia, Thomas.

Holding: The decision of the NLRB that workers described as ''live-haul'' crews—teams of chicken catchers, forklift operators, and truck drivers—are covered ''employees'' within the meaning of the National Labor Relations Act, and not exempt ''agricultural laborers,'' is a reasonable interpretation entitled to deference.

Leavitt v. Jane L. 116 S.Ct. 2068 (1996).

Opinion: Per curiam.

Dissent: Stevens, Souter, Ginsburg, Breyer.

Holding: U.S. Court of Appeals for the Tenth Circuit erred in invalidating a provision of Utah's abortion law, regulating abortions after 20 weeks gestational age, on the grounds that it was not severable from another portion of the law, regulating earlier abortions, that had been ruled unconstitutional.

Montana v. Egelhoff 116 S.Ct. 2013 (1996).

Opinion: Scalia, Rehnquist, Kennedy, Thomas, Ginsburg.

Dissent: O'Connor, Stevens, Souter, Breyer, Stevens.

Holding: Montana's law providing that voluntary intoxication may not be taken into account in determining the existence of a mental state that is an element of a criminal offense does not violate the Due Process Clause.

Morse v. Republican Party of Virginia 116 S.Ct. 1186 (1996).

Opinion: Stevens, Ginsburg, Breyer, O'Connor, Souter.

Dissent: Scalia, Thomas, Kennedy, Rehnquist.

Holding: Section 5 of the Voting Rights Act, which prohibits covered jurisdictions from enforcing new voting qualification or procedure without first obtaining court approval or preclearance by the Attorney General, applies to selection of delegates to a political party's state nominating convention.

Seminole Tribe of Florida v. Florida 116 S.Ct. 1114 (1996).

Opinion: Rehnquist, O'Connor, Scalia, Kennedy, Thomas.

Dissent: Stevens, Souter, Ginsburg, Breyer.

Holding: A provision of the Indian Gaming Regulatory Act authorizing an Indian tribe to sue a state in federal court to compel performance of a duty to negotiate in good faith toward the formation of a compact violates the Eleventh Amendment.

Shaw v. Hunt 116 S.Ct. 1894 (1996).

Opinion: Rehnquist, O'Connor, Scalia, Kennedy, Thomas.

Dissent: Stevens, Ginsburg, Breyer, Souter.

Holding: North Carolina's congressional districting law, containing the racially gerrymandered 12th Congressional District as well as another majority-black district, violates the Equal Protection Clause because, under strict scrutiny applicable to racial classifications, creation of the district was not narrowly tailored to serve a compelling state interest.

OCTOBER 1994 TERM

Adarand Constructors, Inc. v. Pena 115 S.Ct. 2097 (1995).

Opinion: O'Connor, Rehnquist, Kennedy, Thomas, Scalia.

Dissent: Stevens, Ginsburg, Souter, Breyer.

Holding: Racial classifications imposed by federal law must be analyzed by a reviewing court under strict scrutiny.

Florida Bar v. Went For It, Inc. 63 USL W 4644 (1995).

Opinion: O'Connor, Rehnquist, Scalia, Thomas, Breyer.

Dissent: Kennedy, Stevens, Souter, Ginsburg.

Holding: Florida bar rules prohibiting attorneys from sending targeted direct-mail solicitations to victims and their relatives for 30 days following an accident or disaster do not violate the First Amendment.

Gustafson v. Alloyd Co. 115 S.Ct. 1061 (1995).

Opinion: Kennedy, Rehnquist, Stevens, O'Connor, Souter.

Dissent: Thomas, Scalia, Ginsburg, Breyer.

Holding: The right of rescission conferred by section 12(2) of the Securities Act of 1933 against sellers who make material misstatements ''by means of a prospectus'' applies only to a public offering, and does not apply to a private, secondary sale.

Gutierrez de Martinez v. Lamagno 115 S.Ct. 2227 (1995).

Opinion: Gingsburg, Stevens, O'Connor, Kennedy, Breyer.

Dissent: Souter, Rehnquist, Scalia, Thomas

Holding: The Attorney General's certification under the Westfall Act, 28 U.S.C. §2679(d)(1), that a federal employe who was sued for a wrongful or negligent act had been acting within the scope of his employment at the time of the contested action is subject to judicial review.

Hess v. Port Authority Trans-Hudson Corp. 115 S.Ct. 394 (1995).

Opinion: Ginsburg, Stevens, Kennedy, Souter, Breyer

Dissent: O'Connor, Rehnquist, Scalia, Thomas

Holding: The Port Authority Trans-Hudson Corp., a wholly owned subsidiary of the Port Authority of New York and New Jersey that operates a commuter railroad, is not entitled to Eleventh Amendment immunity from suit in federal court.

Kyles v. Whitley 115 S.Ct. 1555 (1995).

Opinion: Souter, Stevens, O'Connor, Ginsburg, Breyer.

Dissent: Scalia, Rehnquist, Kennedy, Thomas

Holding: The petitioner in this federal habeas corpus action is entitled to a new trial in state court because the net effect of the evidence withheld by the State during his murder trial raised a reasonable probability that its disclosure would have produced a different result.

Miller v. Johnson 63 USLW 4726 (1995). Opinion: Kennedy, Rehnquist, O'Connor, Scalia, Thomas. Dissent: Stevens, Ginsburg, Breyer, Souter. Holding: Georgia's congressional districting plan violates the Equal Protection Clause.

Missouri v. Jenkins 115 S.Ct. 2038 (1995). Opinion: Rehnquist, O'Connor, Scalia, Kennedy, Thomas. Dissent: Souter, Stevens, Ginsburg, Breyer. Holding: The district court exceeded its authority in ordering remedies in the longstanding litigation over desegregation of the Kansas City, Missouri public schools.

Oklahoma Tax Comm'n v. Chickasaw Nation 115 S.Ct. 2214 (1995). Opinion: Ginsburg, Rehnquist, Scalia, Kennedy, Thomas. Dissent: Breyer, Stevens, O'Connor, Souter. Holding: Oklahoma may not impose its motor fuels excise tax upon fuel sold by Chickasaw Nation retail stores on tribal trust land, but the State may impose its income tax on members of the Chickasaw Nation who are employed by the Tribe but who reside in the State outside Indian country.

Rosenberger v. University of Virginia 63 USLW 4702 (1995). Opinion: Kennedy, Rehnquist, O'Connor, Scalia, Thomas. Dissent: Souter, Stevens, Ginsburg, Breyer. Holding: The University, which subsidizes the printing costs of publications by student groups that meet requirements for student participation and open membership, violated the free speech clause of the First Amendment by withholding payments for printing of a student magazine because the magazine ''primarily promotes or manifests a particular belie[f] in or about a deity or an ultimate reality.''

Sandin v. Connor 63 USLW 4601 (1995). Opinion: Rehnquist, O'Connor, Scalia, Kennedy, Thomas. Dissent: Ginsburg, Stevens, Breyer, Souter. Holding: In some circumstances, state prisoners have liberty interests that are protected by the Due Process Clause, but these interests are generally limited to freedom from restraint which imposes ''atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.''

Schlup v. Delo 63 USLW 4089 (1995). Opinion: Stevens, O'Connor, Souter, Ginsburg, Breyer. Dissent: Rehnquist, Kennedy, Thomas, Scalia. Holding: A habeas corpus petitioner under sentence of death who submits a second or ''abusive'' federal claim alleging both constitutional error at his trial and newly discovered evidence of innocence must satisfy the standard announced in *Murray v. Carrier* (1986), that it is ''more likely than not that no reasonable juror would have convicted him'' in light of the new evidence.

Shalala v. Guernsey Memorial Hospital 115 S.Ct. 1232 (1995). Opinion: Kennedy, Rehnquist, Stevens, Ginsburg, Breyer. Dissent: O'Connor, Scalia, Souter, Thomas. Holding: In making Medicare provider reimbursement determinations, the Secretary of HHS is not required to follow generally accepted accounting principles.

Tome v. United States 115 S.Ct. 696 (1995). Opinion: Kennedy, Stevens, Scalia, Souter, Ginsburg. Dissent: Breyer, Rehnquist, O'Connor, Thomas. Holding: Federal Rule of Evidence 801(d)(1)(B), which declares that a prior out-of-court statement by a witness ''is not hearsay'' if it is consistent with the witness' testimony and is used to rebut a charge of ''recent fabrication or improper influence or motive,'' permits the introduction of such out-of-court statements only if such statements were made before the alleged fabrication or improper influence or motive originated.

U.S. Term Limits Inc. v. Thornton 115 S.Ct. 1842 (1995). Opinion: Stevens, Kennedy, Souter, Ginsburg, Breyer. Dissent: Thomas, Rehnquist, O'Connor, Scalia. Holding: An Amendment to the Arkansas Constitution denying ballot access to congressional candidates who have already served three terms in the House of Representatives or two terms in the Senate is invalid as conflicting with the qualifications for office set forth in Article I of the U.S. Constitution (specifying age, duration, of U.S. citizenship, and state inhabitancy requirements.)

United States v. Lopez 115 S.Ct. 1624 (1995). Opinion: Rehnquist, O'Connor, Scalia, Kennedy, Thomas. Dissent: Stevens, Souter, Breyer, Ginsburg. Holding: The Gun Free School Zones Act of 1990, which makes it a criminal offense to knowingly possess a firearm within a school zone, exceeds congressional power under the Commerce Clause.

Mr. SPECTER. I noticed the arrival of our very distinguished colleague, Senator ROBERT BYRD, and I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. BYRD. Mr. President, I thank my very distinguished colelague, the senior Senator from Pennsylvania, Mr. SPECTER, for yielding to me and for allowing me to be a cosponsor of the legislation which he has just been discussing before the Senate. I am proud to be one of his colleagues. I have great admiration for Senator Specter and admiration for his knowledge of the law. He has had long and varied experiences. I admire him for that experience.

Senator SPECTER is a good lawyer. If I wanted a lawyer to plead my case to the Supreme Court, I think I would like ARLEN SPECTER. If I were President of the United States—of course, I guess that will never become a reality—I would consider him for Attorney General, even though he is on the other side of the aisle. He calls the shots like they are.

I am pleased to join with my distinguished colleague in introducing the legislation. Our proposal is aimed at helping the Senate to fulfill its constitutional duty by directing the Judiciary Committee to establish a pool of the best and the brightest Supreme Court candidates for the President's consideration whenever there is a vacancy on the Court—the best and the brightest.

I personally do not promote the idea that we must make diversity a criterion. I have no problem with diversity, as long as the chosen ones are chosen because of their merit—their merit. That is what we seek to do here. We want the best and the brightest—not because they are Republicans, or not because they are Democrats, necessarily, but because they are the best and the brightest.

As anyone who has ever read the Constitution knows, one of the most important differences between the Senate and the House of Representatives is the Senate's constitutional duty to advise and consent on Presidential nominations. Specifically, that power which is contained in article II, section 2, stipulates that the President, ''by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of

the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law.''

While it may be true that the Senate has traditionally given a President great leeway in choosing his executive branch subordinates, especially those in Cabinet and sub-Cabinet positions, such deference on the part of the Senate has generally not applied to judicial nominations, particularly Supreme Court nominations. On the contrary, the Senate has historically exercised great caution to ensure that it carries out its responsibility, a responsibility that is a fundamental element of the separation of powers established in the Constitution.

While we have been very diligent in granting our consent, I believe, as does Senator SPECTER, that the Senate has been less than energized with respect to the offering of its advice. The Constitution refers to the ''Advice and Consent.''

It doesn't just refer to the word ''consent,'' nor does it put the word ''consent'' in front of the word ''advise.'' It uses the phrase ''advise and consent of the Senate.'' Too often, as the American people are acutely aware, nominations to the High Court have become embroiled in special interest battles. All too often, the qualifications of a nominee have been aside as outside forces—interest groups and so on—have sought to use a nomination as a means of furthering their particular ideological agenda. That is not what the Supreme Court is for. Too often, the eventual loser in the process is not just the individual who has been nominated, but also the Court and its integrity, and also, more than that even, the people of the United States—the whole people, not just some particular interest group, but all of the people.

Mr. President, in an era when the nine life-tenured Justices who sit on our highest Court routinely decide questions that go to the very heart of life, liberty, and the pursuit of happiness, we cannot afford to have anything less than the most highly qualified individuals serving on that Court.

While I do not mean to disparage any of the current Justices, the fact remains that, more and more, nominees are being selected for reasons that go beyond their qualifications, that go beyond their abilities, that go beyond their dedication, their reverence for and dedication to the Constitution. Accordingly, Senator SPECTER has come to the conclusion—and he has allowed me to join him—that the best way to resolve this problem and the best way for the Senate to undertake its advice responsibility is to direct the Judiciary Committee, after consultation with the finest legal minds in our country, to establish a panel of potential nominees that would be made available to the President—this President, or any other President. In so doing, it is our hope that we can begin to depoliticize the nomination process and, in turn, help restore to the High Court the esteem, much of which has been lost over the past few years.

In closing, I again want to thank Senator SPECTER for his thoughtfulness, for his vision, as we have worked on the resolution. I know that he shares my concern that the Senate has not only this responsibility, but it has a duty, a constitutional duty, to ensure that the highest Court in the land is comprised of the best and the brightest talent that our Nation has to offer. I hope that others will join us in this effort.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SPECTER. Mr. President, I thank my colleague, Senator BYRD, for those comments about the substance of the resolution. When Senator BYRD joins on an issue of constitutional import, there is great weight. I thank him on a personal level for his very kind comments about me. When he started to talk about an appointment of ARLEN SPECTER if Senator BYRD were President, I was about to start a rumor on ''Byrd for President.'' I still might. If it was the Attorney General job, I am not so sure, but if it had been the Supreme Court he was talking about, I might have had a little more motivation on that.

In the case of Raines versus Byrd, where Senator BYRD challenged the line-item veto, in which a curious decision of the Supreme Court said that Senator BYRD, Senator HATFIELD, Senator MOYNIHAN, and Senator LEVIN didn't have standing, that goes to show you we need more advice from the Senate in anticipation. When Senator BYRD said he might have asked me to argue the case, I have argued three cases in the Supreme Court—most recently, in March of 1994, on the Base Closing Commission. It was the fastest 30 minutes of my life, to appear before the Supreme Court, and 7 of those sitting nine Justices had appeared before the Senate Judiciary Committee. I noted a certain tenor of questions from the Court, similar to the ones, I had asked when they appeared as nominees for the Supreme Court. Although, I was not successful in that case, the Court being reluctant to upset 300 base closings, the Harvard Law Review published a detailed critique of the case and found that my position was right on the separation of powers. That was just a word or two on a parenthetical expression.

Mr. President, I am going to revise my approach a little bit and at this time formally offer this resolution on behalf of Senator BYRD and myself on the advise and consent function. I realize that it cannot be acted on in this session, but it will be a guidepost for revision after consultation with our colleagues.

I again thank my colleague, Senator BYRD, and I yield the floor.

SENATE RESOLUTION 147—RELATIVE TO AUTHORIZING TESTIMONY, PRODUCTION OF DOCUMENTS, AND REPRESENTATION

Mr. LOTT (for himself and Mr. DASCHLE) submitted the following resolution; which was considered and agreed to.

S. RES. 147

Whereas, in the case of First American Corp., et al. v. Sheikh Zayed Bin Sultan Al-Nahyan, et al., C.A. No. 93–1309 (JHG/PJA), pending in the United States District Court for the District of Columbia, the plaintiff has requested testimony from Jack Blum, a former employee on the staff of the Committee on Foreign Relations, and the production of documents of the Committee on Foreign Relations;

Whereas, pursuant to sections 703(a) and 704(a)(2) of the Ethics in Government Act of 1978, 2 U.S.C. §§ 288b(a) and 288c(a)(2), the Senate may direct its counsel to represent Members, employees, committees, and subcommittees, of the Senate with respect to any subpoena, order, or request for testimony or documents relating to their official responsibilities;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate may, by the judicial process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that evidence under the control or in the possession of the Senate may promote the administration of justice, the Senate will take such action as will promote the ends of justice consistently with the privileges of the Senate: Now, therefore, be it

Resolved, That Jack Blum is authorized to testify in the case of First American Corp., et al. v. Sheikh Zayed Bin Sultan Al-Nahyan, et al., except concerning matters for which a privilege should be asserted, and the chairman and ranking minority member of the Committee on Foreign Relations, acting jointly, are authorized to produce records of the Committee relating to the investigation of the Subcommittee on Terrorism, Narcotics, and International Operations into the Bank of Credit and Commerce, International.

SEC. 2. That the Senate Legal Counsel is authorized to represent Jack Blum, the Committee on Foreign Relations, and any present or former Member or employee of the Senate, in connection with First American Corp., et al. v. Sheikh Zayed Bin Sultan Al-Nahyan, et al.

AMENDMENTS SUBMITTED

THE RECIPROCAL TRADE AGREEMENT ACT OF 1997

CRAIG AMENDMENTS NOS. 1603–1608

(Ordered to lie on the table.)

Mr. CRAIG submitted six amendments intended to be proposed by him to the bill (S. 1269) to establish objectives for negotiating and procedures for implementing certain trade agreements; as follows:

AMENDMENT NO. 1603

On page 41, between lines 16 and 17, insert the following:

(d) ADDITIONAL LIMITATIONS ON APPLICATION OF TRADE AGREEMENT APPROVAL PROCEDURES.—